

## CHAPTER LIII.

[H. B. No. 354.]

## RELATING TO SALES OF PROPERTY UNDER EXECUTION.

AN ACT relating to the sales of property under execution, decrees, and orders of sale, and the confirmation of sheriff's sales, and redemption therefrom, and repealing an act passed by the legislature of the State of Washington March 2, 1897, approved March 10, 1897, entitled "An act relating to the sale of property under execution and decrees, and the confirmations of sheriff's sales, and repealing sections 511, 512, 513, 514, 515, 516, 517, 518, 519, 520 and 521 of Vol. 2 of Hill's Annotated Statutes and Codes of the State of Washington, relating to the redemption of real estate sold on decrees of foreclosure and on execution" and declaring an emergency.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in section three (3) of this act.

Manner of execution decree of foreclosure.

SEC. 2. When there is an agreement of the judgment debtor for the payment of any sum of money secured by a mortgage or other lien, and a deficiency judgment is consented to in said agreement, the court may direct in the decree that the balance due and costs which may remain unsatisfied after the sale of the property shall be satisfied from any property of the judgment debtor, and if any part of the judgment, interest and costs remains unsatisfied, the sheriff shall forthwith proceed to levy upon any property of the judgment debtor not exempt from execution, and all subsequent proceedings under said execution shall conform to the provisions of this act. The judgment creditor may also obtain from the clerk of the court execution on executions in the

Deficiency judgment may be had in certain cases.

ordinary form for such deficiency: *Provided*, That in case of mortgage foreclosure where the mortgage contains a stipulation that no deficiency judgment shall be taken against the mortgagor, but that the mortgagee shall look to the mortgaged premises for satisfaction of his claim, no deficiency judgment shall be allowed.

Action to recover without asking for foreclosure waives mortgage security.

The commencement of an action for the recovery of a debt secured by mortgage not asking a foreclosure of the mortgage and brought before a foreclosure of the mortgage and sale thereunder, shall be, and be deemed to be, a waiver of the mortgage security; and this provision may not be waived or avoided by agreement contained in the mortgage or otherwise.

Notice of sale.

SEC. 3. Before the sale of property under execution, order of sale or decree, notice thereof shall be given as follows: 1. In case of personal property, by posting written or printed notice of the time and place of sale in three (3) public places in the county where the sale is to take place, for a period of not less than ten (10) days prior to the day of sale. 2. In case of real property, by posting a similar notice, particularly describing the property for a period of not less than four (4) weeks prior to the day of sale, in three (3) public places in the county, one of which shall be at the court house door, where the property is to be sold, and one posted on the property to be sold, and publishing a copy thereof once a week, consecutively for the same period, in a newspaper of general circulation published in the county. 3. All notices of sales of property on execution or order of sale, required by law to be published in any newspaper shall be so published in a newspaper of the county which shall be selected by the sheriff, and if there is no newspaper published in the county, then such notice shall be published in the newspaper published in this state nearest to the place of sale: *Provided*, That if the person at whose instance the execution or order of sale is issued, or his attorney, shall present to the sheriff a receipt of the publisher of any newspaper showing full payment for the publication, then the notice shall be published in that

newspaper: *And provided further*, That the charge for any such publication shall not exceed seventy-five cents per square for first insertion, and thirty-seven and one half cents per square for each subsequent insertion.

SEC. 4. All sales of property under execution, orders of sale or decree, shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the office [officer] holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the court house door on Saturday.

SEC. 5. Upon a sale of real property under execution, decree or order of sale, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided. At the time of the sale the sheriff shall give to the purchaser a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot, or parcel, the whole price paid, and when subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

SEC. 6. Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause, on which the

execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation," and the following proceedings shall be had :

Confirmation of sale.

1. The plaintiff at any time after ten days from the filing of such return shall be entitled, on motion therefor, to have an order confirming the sale, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk within ten days after the filing of such return, his objections thereto. 2. If such objections be filed the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be as upon an execution received of that date.

Objection to confirmation.

Proceeds of sale to be paid to clerk.

3. Upon the return of the execution, the sheriff shall pay the proceeds of sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale. 4. Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever. 5. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale: *Provided*, Such party file with the clerk a waiver of all objections made or to

Re-sale.

Disposition of surplus.

be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

SEC. 7. Property sold subject to redemption, as above Redemption. provided, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

1. The judgment debtor or his successor in interest, in the whole or any part of the property separately sold.

2. A creditor having a lien by judgment, decree or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in sub-division two of this section are termed redemptioners.

SEC. 8. The judgment debtor or his successor in interest, or any redemptioner, may redeem the property at any time within one year after the sale, on paying the amount of the bid, with interest thereon at the rate of eight per cent. per annum to the time of redemption, together with the amount of any assessment or taxes which the purchaser or his successor in interest may have paid thereon after purchase, and like interest on such amount; and if the purchaser be also a creditor having a lien, by judgment, decree or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest. Who may redeem.

SEC. 9. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner by paying the sum paid on such last redemption with interest at the rate of eight per cent. per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said Re-redemption.

last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate of eight per cent. per annum, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens by judgment, decree or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, previous to his own, with interest. If the purchaser or redemptioner shall pay any taxes or assessments, or have or acquire any such lien as herein mentioned, he must file a statement thereof with the auditor of the county where said property is situate before the property shall have been redeemed from him, otherwise the property may be redeemed without paying such tax, assessment or lien. Such statement shall be recorded by such auditor.

**Sheriff's deed.** SEC. 10. If no redemption be made within one year after the sale the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, or notice given operating to extend period of redemption, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by the redemptioner. If the judgment debtor redeem, the effect of the sale is terminated and he is restored to his estate.

**Certificate of redemption.** A certificate of redemption must be filed and recorded in the office of the auditor of the county in which the property is situated, and the auditor must note the

record thereof in the margin of the record of the certificate of sale.

SEC. 11. When two or more persons apply to the sheriff to redeem at the same time he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption; or if not, at any time thereafter when demanded. When a sheriff shall wrongfully refuse to allow any person to redeem, his right to redeem shall not be prejudiced thereby, and the sheriff may be required, by order of the court, to allow such redemption.

In case two or more redemptioners.

SEC. 12. The mode of redeeming shall be as provided in this section. The person seeking to redeem shall give the sheriff at least five days written notice of his intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or his attorney, of the receipt of such notice, if such person be within such county. At the time and place specified in such notice the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating therein the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A person seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:

Mode of redemption.

1. If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed; or if he seeks to redeem upon mortgage, the certificate of the record thereof; also an affidavit, verified by himself or agent, showing the amount then actually due thereon.

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent, showing the amount then actually due on the judgment, decree or mortgage.

3. If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the evidence thereof, and the amount due thereon, or the same may be disregarded.

Possession  
during period  
of redemption.

SEC. 13. The purchaser, from the time of the sale until the redemption, and the redemptioner from the time of his redemption until another redemption, except as hereinafter provided, is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by such person or persons thus entitled thereto, from the property thus sold, preceding the redemption thereof from him, the amount of such rents and profits, over and above the expenses paid for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid; and if the redemptioner or other person entitled to make such redemption, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of such rents and profits thus received, and expenses paid and incurred, the period for redemption is extended five (5) days after such sworn statement is given by such person thus receiving such rents and profits, or by his agent, to the person making such demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his agent or his attorney, if such service can be made in the county where the property is situate. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, such redemptioner or other person entitled to redeem from such sale, making such demand, may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from

Rents and  
profits in case  
of redemption.

and after the final determination of such action the right of redemption is extended to such redemptioner or other person making such demand who shall be entitled to redeem. If a sworn statement is given by the purchaser or other person receiving such rents and profits, and such redemptioner or other person entitled to redeem, who makes such demand, desires to contest the correctness of the same, he must first redeem in accordance with such sworn statement, and if he desires to bring an action for an accounting thereafter he may do so within thirty days after such redemption, but not later: *Provided*, That if such property be farming or agricultural property and be in possession of any purchaser or any redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or his tenant has performed any work in preparing such property for crops, or planted crops, he shall be entitled to reimbursement for such work and labor or the right to retain possession of such property until the first day of December following, and the redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser and accounted for to the redemptioner.

SEC. 14. Until the expiration of the time allowed for redemption the court may restrain the commission of waste on the property. But it is not waste for the person in possession of the property at the time of the sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repairs of fences, or for fuel in his family while he occupies the property.

SEC. 15. The purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of his redemption until another redemption, shall

Court may restrain waste during redemption period.

Possession during redemption period.

be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption: *Provided*, That when a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired the court shall make its decree to that effect and the mortgagor have such right: *Provided further*, That as to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used at the time of sale for farming purposes the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall if the judgment debtor do not redeem have a lien upon the crops raised or harvested thereon during the period of such possession for interest on the purchase price at the rate of six per cent. per annum during the period of possession and for any taxes with interest: *And, provided further*, That in case of any homestead occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or value of occupation.

In case of  
farming lands.

In case of  
homesteads.

Sheriff's deed. SEC. 16. In all cases where real estate has been, or may hereafter be sold in pursuance of law by virtue of an execution or other process, issued upon an ordinary money judgment, or by virtue of execution, or other process issued upon a decree for the foreclosure of a mortgage or other lien it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same a deed of conveyance of the real estate so sold immediately after the time for redemption from such sale has expired: *Provided*, Such sale has been duly confirmed by order of the court. In case the term of office of the sheriff or other officer making such sale shall have ex-

pired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this act, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale.

SEC. 17. The party to whom such sheriff's deed is given shall, upon receipt thereof, take the same to the clerk of the superior court, who shall enter in his book of levies, where the levy is recorded, the sale of real estate therein conveyed, and shall endorse the fact upon the deed, with the date when presented to him and when made. And no county auditor shall record any such deed without such endorsement.

Deed to be  
entered and  
indorsed.

SEC. 18. An act relating to sale of property under execution, passed by the legislature March 2, 1897, and approved by the governor March 10, 1897, entitled: "An act relating to the sale of property under execution and decrees, and the confirmation of sheriff's sales and repealing section[s] 511, 512, 513, 514, 515, 516, 517, 518, 519, 520 and 521 of Vol. 2 of Hill's Annotated Statutes and Codes of the State of Washington, relating to the redemption of real estate sold on decree of foreclosure and on execution" is hereby repealed: *Provided*, such repeal shall not affect any rights existing under said act or said sections nor any proceeding pending thereunder.

SEC. 19. An emergency exists and this act shall take effect immediately.

Passed the House February 15, 1899.

Passed the Senate February 28, 1899.

Approved March 8, 1899.